

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DR. ANIL AGARWAL; MADHU
AGARWAL,

Plaintiffs,

-against-

UNITED STATES OF AMERICA, *et al.*,
Defendants.
-----X

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3-2-15

14 Civ. 1873 (PAC) (KNF)

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

HONORABLE PAUL A. CROTTY, United States District Judge:

Pro se Plaintiffs Dr. Anil Agarwal and Madhu Agarwal (collectively, "Plaintiffs") brought this action against multiple defendants, most of whom live in New Jersey and Pennsylvania, alleging violations of their constitutional rights under the First, Seventh, and Fourteenth Amendments. Defendants Borough of Lodi, Edward Reuter, Vincent J. Caruso, Gary Paparozzi, Judge Scott G. Sproviero, Borough Clerk of Lodi, Judge Tracie Nunno-D'Amico, Judge Giuseppe Randazzo, Carol DeFalco, Lodi Police Officers #1 and 2, Judge Gregg A. Padovano, Ronald Dario, and the Borough of Maywood (collectively, "Defendants")¹ have moved to dismiss the complaint for insufficient service of process under Fed. R. Civ. P. 12(b)(5) and failure to state a claim under Fed. R. Civ. P. 12(b)(6). Dkt. 11.

¹ Several other defendants have also filed motions to dismiss. *See* Dkts. 27, 31, 36, 46, 53, 58, 65, 71, 75, and 81. The Report and Recommendation ("R & R"), and this Order adopting the R & R, only address the motion to dismiss filed by the aforementioned defendants at Dkt. 11.

On February 6, 2015, Magistrate Judge Kevin Nathaniel Fox issued a Report and Recommendation (“R & R”) on the motion. With respect to Defendants’ arguments regarding insufficient service of process, Magistrate Judge Fox found that “no basis exists upon which the court would be warranted” in granting a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(5) because Defendants had failed to submit affidavits setting forth factual information in support of the motion as required by Local Civil Rule 7.1(a)(3). R & R at 10-11.² Magistrate Judge Fox recommends that Defendants’ 12(b)(6) motion be granted because Plaintiffs failed to provide factual allegations “from which the Court might draw the reasonable inference that a movant is liable for one or more of the constitutional violations the plaintiffs contend were committed.” R & R at 15. Magistrate Judge Fox found that because Plaintiffs did not include any specific facts demonstrating that Defendants violated any of their constitutional rights, Plaintiffs’ amended complaint cannot withstand Defendants’ motion to dismiss. *Id.*

The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). The Court may adopt those portions of the R & R to which no timely objection has been made, so long as there is no clear error on the face of the record. *DiPilato v. 7-Eleven, Inc.*, 662 F. Supp. 2d 333, 339 (S.D.N.Y. 2009).

The parties had until February 23, 2015 to file objections to the R & R. On February 26, 2015, Plaintiffs filed a letter requesting ninety days “more time to study all [l]egal rulings in the cases referred in various defendants in the Motion to dismiss as Entry Nos. 27, 31, 36, 46, 53 and 58.” Dkt. 85. But these docket entries represent motions to dismiss filed by parties not included

² The Court notes that when a defendant challenges service of process, the plaintiff bears the burden of proof to show the adequacy of service. *Rosario v. Cirigliano*, 2011 WL 4063257, at *4 (S.D.N.Y. Sept. 12, 2011).

in the instant motion. No recommendation or decision has been made with respect to these motions. Considering the lack of substance to the pleadings, there is no basis for "at least 90 days extension" to object. Certainly Plaintiffs provide no basis for their request for an extension. Accordingly, the request for additional time to object to the R & R is denied.

The Court reviews the R & R for clear error and finds none. Accordingly, the Court adopts Magistrate Judge Fox's R & R, and Defendants' motion to dismiss is granted. The Clerk of Court is directed to terminate the motion at Docket Number 11. The reference to Magistrate Judge Fox is continued.

Dated: March 2, 2015
New York, NY

SO ORDERED:



PAUL A. CROTTY

United States District Judge

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